

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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EXOBOX TECHNOLOGIES CORP.,

Plaintiff,

v.

ZACHARY TSAMBIS, et al.,

Defendant.

Case No. 2:14-cv-00501-RFB-VCF

ORDER DENYING MOTION TO DISMISS

**I. INTRODUCTION**

Exobox Technologies Corp. (“Exobox”), a Nevada Corporation, has filed suit against Zachary Tsambis, a Pennsylvania resident, in the District of Nevada, alleging Intentional Interference with Prospective Economic Advantage and Civil Conspiracy for Tsambis’s role in interrupting a deal to acquire a majority equity interest in another company. Claiming that he lacks contacts with Nevada sufficient to subject him to personal jurisdiction, Tsambis has, in the instant motion, moved for Summary Judgment under Fed. R. Civ. P. 12(b)(2). This Court, however, for the reasons discussed below, finds that Tsambis is subject to personal jurisdiction in Nevada.

**II. BACKGROUND**

**A. Facts**

Exobox is a Nevada corporation publicly traded on the over-the-counter market. Exobox has a principle place of business in Long Beach, California and conducts business in Clark County, Nevada.

Zachary Tsambis is a resident of Allegheny County, Pennsylvania and claims to have

1 been an Exobox shareholder at all relevant times; Exobox claims Tsambis was not a shareholder.  
2 Tsambis is a moderator on the Investorshub (“iHub”) website and regularly participates in online  
3 messages boards discussing investments, including investments in Exobox. Exobox claims  
4 Tsambis has claimed to be a custodian of records for Exobox and that Tsambis offered Exobox’s  
5 former CEO \$20,000 to step down and appoint Tsambis CEO. Tsambis does not reside in  
6 Nevada and does not do business in Nevada. Tsambis registered two corporations in Nevada,  
7 which he claims never materialized into operating businesses.

8 In early 2014, Exobox announced publicly in a Form 8-K Current Report that it was  
9 going to acquire a majority of the equity interests in Cherubim Builders Group, LLC from PDX  
10 Partners, Inc. (“Share Exchange”). Exobox claims that the Share Exchange would have raised  
11 significant and much-needed funds and that Exobox shareholders would maintain their interest in  
12 Exobox through the new public company and would also be given shares of the emergent,  
13 publicly traded Cherubim Builders Group company. Tsambis claims the transaction served no  
14 legitimate business purpose and violated a shareholders’ vote. The Share Exchange deal was set  
15 to close by February 28, 2014.

16 Tsambis used the iHub and other message boards to make statements about Exobox and  
17 threatened to file a lawsuit to enjoin Exobox from consummating the Share Exchange. Tsambis  
18 stated on the iHub forums, “I’m of the opinion that this transaction will not go through as it is  
19 stated,” Compl. ¶ 14, ECF No. 1, “our holdings will become burnt toast if we don’t stop this  
20 (dilution) deal,” and “I’m of the strong belief that some fireworks may go off real soon that may  
21 stop the proposed [deal],” Compl. ¶ 15 (alteration in original). Tsambis also contacted Exobox’s  
22 CEO directly, saying, “But know there is a die-hard group of large shareholders who I believe  
23 would rather see this ship sink then [sic] to see someone else make off with any of the leftover  
24 goods . . . .” Compl. ¶ 16 (alteration in original). Later, Tsambis used iHub to solicit and obtain  
25 funds from other Exobox shareholders to finance the threatened lawsuit. On or about February  
26 28, 2014, Tsambis used these solicited funds to file a lawsuit seeking to enjoin the Share  
27 Exchange, in Harris County, Texas. The Share Exchange was cancelled; Exobox claims this  
28 caused it monetary damages.

1                   **B. Procedure**

2           On April 3, 2014, Exobox filed the Complaint in the present case in the District of  
3 Nevada. In its Complaint, Exobox claims two causes of action. First, Exobox claims Tsambis  
4 intentionally interfered with prospective economic advantage by taking actions which resulted in  
5 the termination of the Share Exchange. Compl. ¶¶ 31–40. Second, Exobox claims Tsambis and  
6 other to-be-named Exobox shareholders joined in a civil conspiracy to finance litigation intended  
7 to disrupt and prevent the Share Exchange. Compl. ¶¶ 41–47.

8           On June 13, 2014, Tsambis filed the instant Motion to Dismiss for lack of personal  
9 jurisdiction. ECF No. 8.

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11           **III. Motion to Strike**

12           Nestled in Exobox’s response to Tsambis’s Motion to Dismiss is what appears to be a  
13 motion to strike the instant Motion to Dismiss for failure to comply with District of Nevada  
14 Local Rule IA 10-2. Opp’n to Mot. to Dismiss 2:16–24, ECF No. 15. Local Rule IA 10-2(a)  
15 states, “An attorney who is not a member of the Bar of this Court, who has been retained or  
16 appointed to appear in a particular case, may do so only with permission of this Court.” The  
17 Local rules go on to require that “[a]n attorney whose verified petition is pending shall take no  
18 action in this case beyond filing the first pleading or motion.” D. Nev. R. IA 10-2(c). Local  
19 Rule IA 10-2(k) provides that “[f]ailure to comply timely with this Rule may result in the  
20 striking of any and all documents previously filed by such attorney, the imposition of other  
21 sanctions, or both.”

22           Here, Tsambis filed motions on behalf of himself that Exobox claims were  
23 “ghostwritten” by Suzanne J. DuBose, an attorney who is not licensed to practice law in Nevada.  
24 Opp’n to Mot. to Dismiss 2:20–23. This claim is supported by, among other things, the curious  
25 “Certificate of Conference” attached to Tsambis’s instant Motion. Mot. to Dismiss 17.  
26 However, the language of Local Rule IA 10-2 clearly and narrowly contemplates restrictions  
27 only on who may “appear” before this Court in a particular case and not broader questions about  
28 who may practice law in the State of Nevada. This Court declines to consider whether the

1 alleged ghostwriting implicates any Nevada laws, and it declines, at this time, to inquire into this  
2 matter in the context of deciding the instant motion. Local Rule IA 10-2 is a discretionary rule  
3 as to discipline and sanctions. The Court declines to exercise such discretion at this time.

4 Exobox's motion to strike is accordingly denied.

#### 6 **IV. Motion for Evidentiary Hearing**

7 In deciding personal jurisdiction, the court may in its discretion order discovery, hold an  
8 evidentiary hearing, or rely only on the written submissions. Doe v. Unocal Corp., 248 F.3d 915,  
9 922 (9th Cir. 2001); Data Disc, Inc. v. Sys. Tech. Associates, Inc., 557 F.2d 1280, 1285 (9th Cir.  
10 1977) ("Because there is no statutory method for resolving this issue, the mode of its  
11 determination is left to the trial court.").

12 Here, the Court finds that there is sufficient evidence in the pleadings and moving papers  
13 to render a decision. Therefore, Tsambis's Motion for an Evidentiary Hearing, ECF No. 7, is  
14 denied.

#### 16 **V. Motion of Summary Judgment for Lack of Personal Jurisdiction**

17 For the reasons given below, Tsambis's Motion to Dismiss for Lack of Personal  
18 Jurisdiction, ECF No. 8, is denied.

##### 19 **A. Legal Standard**

20 A plaintiff bears the burden of establishing personal jurisdiction. Tuazon v. R.J.  
21 Reynolds Tobacco Co., 433 F.3d 1163, 1168 (9th Cir. 2006). When, as here, the Court resolves  
22 the motion to dismiss based only on written submissions, a plaintiff must make a prima facie  
23 showing of facts that would support personal jurisdiction. Id. That is, Plaintiffs "need only  
24 demonstrate facts that if true would support jurisdiction." Ballard v. Savage, 65 F.3d 1495, 1498  
25 (9th Cir.1995).

26 To establish that personal jurisdiction over a defendant is proper, a plaintiff must show  
27 (1) that the forum state's long-arm statute confers personal jurisdiction and (2) that the exercise  
28 of jurisdiction comports with the constitutional principles of due process. Rio Properties, Inc. v.

1 Rio Int'l Interlink, 284 F.3d 1007, 1019 (9th Cir. 2002). Because Nev. Rev. Stat. section 14.065  
 2 permits Nevada courts to exercise jurisdiction to the same extent as the Constitution, this Court  
 3 need only consider the constitutional principles of due process. Walden v. Fiore, 134 S. Ct.  
 4 1115, 1121 (2014).

## 5 **B. Analysis**

### 6 **1. General Jurisdiction**

7 Exobox argues that Nevada has general personal jurisdiction over Tsambis. This  
 8 argument is not convincing.

9 Personal jurisdiction can be general or specific. General personal jurisdiction is an  
 10 exacting standard which requires “continuous and systematic” contacts that “approximate  
 11 physical presence.” Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 801 (9th Cir.  
 12 2004). “Put another way, a defendant must not only step through the [jurisdictional] door, it  
 13 must also sit down and make itself at home.” Tuazon, 433 F.3d at 1169 (internal quotation  
 14 marks omitted); see Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S. Ct. 2846, 2853–  
 15 54 (2011) (“For an individual, the paradigm forum for the exercise of general jurisdiction is the  
 16 individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is  
 17 fairly regarded as at home.”).

18 In support of its argument for general jurisdiction, Exobox contends that Tsambis  
 19 incorporated, and is the sole managing member of, two Nevada limited liability companies and  
 20 in that role “would have been the one to appoint” the Nevada registered agents for these  
 21 companies. Id. at 4:7–10; accord Id. 4:12–14. Exobox claims that, as of the time of filing, one  
 22 of these companies’ business licenses had been revoked but that the other license was still active.  
 23 Exobox further states that Tsambis is not only a shareholder who posts messages, but that he also  
 24 is highly involved in Exobox’s business through online messaging, message board moderation,  
 25 online organization of shareholders, and operating his own Exobox-focused website. Tsambis  
 26 acknowledges the registration of the two Nevada companies (which he claims never conducted  
 27 any business), three vacation trips to Nevada, and involvement with Exobox through online  
 28 websites. Mot. to Dismiss ¶ 17; Aff. of Zachary Tsambis 1–2.

The Court finds that Tsambis' connections to Nevada and his actions within it are insufficient to establish general jurisdiction. The two Nevada corporations do not appear to have actually done business in Nevada. Tsambis' online contacts are focused on particular transactions of Exobox and do not suggest systemic contacts with Nevada. Tsambis has no other contacts which could be construed as continuous and systemic.

## 2. Specific Jurisdiction

Exobox does, however, make out a *prima facie* case for specific jurisdiction.

Specific jurisdiction requires certain minimum contacts and must not offend traditional notions of fair play and substantial justice. Schwarzenegger, 374 F.3d at 801 (quoting Int'l Shoe Co. v. Wash., 326 U.S. 310, 216 (1945)). This “minimum contacts” test requires three things: (1) the defendant must have purposefully directed specific activities toward the state forum, (2) the plaintiff's claim must arise out of or relate to those specific forum-related activities, and (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. be reasonable. Schwarzenegger, 374 F.3d at 802. The plaintiff bears the burden of satisfying the first two elements, and then, if the plaintiff successfully does so, the defendant has the burden of presenting a compelling case that jurisdiction would be unreasonable. Id.

### a. Purposeful Direction

The purposeful direction requirement has three necessary elements. To satisfy the purposeful direction requirement the defendant “must have (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.” Brayton Purcell LLP v. Recordon & Recordon, 606 F.3d 1124, 1128 (9th Cir. 2010). This is sometimes referred to as the “effects test” or “Calder test.” See Calder v. Jones, 465 U.S. 783 (1984).

### **i. Intentional Act**

An intentional act requires “an intent to perform an actual, physical act in the real world, rather than an intent to accomplish a result or consequence of that act.” Brayton Purcell, 606 F.3d at 1128. It is undisputed that Tsambis acted intentionally when he posted several messages online regarding Exobox. He also acted intentionally when he filed a lawsuit in Texas directed

1 at Exobox in Nevada.

2 **ii. Expressly Aimed**

3 Express aiming requires more than mere foreseeability, it requires conduct expressly  
4 aimed at the forum state. Brayton Purcell, 606 F.3d at 1129. The express aiming requirement is  
5 satisfied when defendant is alleged to have engaged in wrongful conduct targeted at plaintiff  
6 whom defendant knows to be a resident of the forum state. CollegeSource, Inc. v. AcademyOne,  
7 Inc., 653 F.3d 1066, 1077 (9th Cir. 2011). Here, Tsambis has posted online messages and filed  
8 a Texas lawsuit against Exobox, which he knew to be a Nevada corporation, and in doing so  
9 expressly aimed his conduct into Nevada. Tsambis argues that this action is inadequate to  
10 demonstrate express aiming. This Court disagrees.

11 Ninth Circuit precedent regarding the express aiming requirement clearly establishes that  
12 behavior, such as that allegedly done by Tsambis, is “expressly aimed.” For example, in Myers  
13 v. Bennett Law Offices, the Ninth Circuit found that a Utah defendant had expressly aimed his  
14 conduct into Nevada when he requested credit reports on Nevada residents. 238 F.3d 1068, 1073  
15 (9th Cir. 2001). Perhaps even more instructive, in Bancroft & Masters, Inc. v. Augusta Nat. Inc.,  
16 the Ninth Circuit held that a letter sent from Georgia to a Virginia domain registration company  
17 targeting a California corporation constituted express aiming at California. 223 F.3d 1082, 1088  
18 (9th Cir. 2000) holding modified by Yahoo! Inc. v. La Ligue Contre Le Racisme Et  
19 L'Antisemitisme, 433 F.3d 1199 (9th Cir. 2006). In Bancroft, the letter to the Virginia domain  
20 registration company was sent with the intention of triggering the Virginia company’s dispute  
21 resolution procedures which would interfere with the California company’s internet operations.  
22 Here, Exobox claims, litigation was begun in Texas with the intent to interfere with a Nevada  
23 company’s business transactions. This is expressly aimed conduct.

24 Tsambis asks this Court to read the recently decided Supreme Court case, Walden, 134 S.  
25 Ct. 1115, as overturning Bancroft and related cases that say contact with a resident in Nevada is  
26 sufficient to find conduct is expressly aimed. The Court declines to do so for two reasons. First,  
27 Walden is factually distinguishable from this case as well as from Bancroft. In Walden, a pair of  
28 professional gamblers were traveling from San Juan to Las Vegas, through Atlanta, with a

1 substantial amount of cash. Id. at 1118. In Atlanta, the cash was seized by a DEA agent who  
 2 thereafter allegedly drafted a false and misleading affidavit to show probable cause for forfeiture.  
 3 Id. at 1118–20. The Supreme Court held that a Nevada court was not allowed to exercise  
 4 personal jurisdiction over a defendant on the basis that he knew his allegedly tortious conduct in  
 5 Georgia would have delayed the return of funds to the claimants with connections to Nevada.  
 6 The Supreme Court explained that “[t]he plaintiff cannot be the only link between the defendant  
 7 and the forum.” The Court further explained that “it is the defendant's conduct that must form  
 8 the necessary connection with the forum State that is the basis for its jurisdiction over him.” Id.  
 9 at 1122–23.

10 In Walden, it was “undisputed that no part of petitioner’s course of conduct occurred in  
 11 Nevada.” Id. at 1124. In contrast, here (as in Bancroft) the Plaintiffs do not rely on the “random,  
 12 fortuitous, or attenuated contacts” or the “unilateral activity” of a plaintiff to establish contact  
 13 with the forum state. Id. at 1123. Exobox points to the unilateral actions of Tsambis directed to  
 14 the forum state. In Walden, Defendant directed his activities at an entity that incidentally  
 15 happened to be going to Nevada. In this case, Tsambis chose to direct his activities to an entity  
 16 known to be in Nevada.

17 Second, the Supreme Court’s opinion in Walden stops well short of overturning the  
 18 Bancroft line of cases. Rather, the Supreme Court decided Walden narrowly on the facts before  
 19 it. Until a higher court overrules it, Bancroft is still the law of this Circuit and binds this Court.  
 20 Because Bancroft is more analogous—and Walden is distinguishable—from the instant case, this  
 21 Court must apply Bancroft. Accordingly, this Court finds that Tsambis has expressly aimed his  
 22 conduct into Nevada.

### 23 **iii. Harm in Forum State**

24 “The final element requires that [the Defendant’s] conduct caused harm that it knew was  
 25 likely to be suffered in the forum,” but “does not require that the ‘brunt’ of the harm be suffered  
 26 in the forum.” Brayton Purcell, 606 F.3d at 1131. Exobox is a Nevada corporation that conducts  
 27 business in Clark County, Nevada. Complaint ¶ 1. Exobox claims Tsambis “knew Exobox was  
 28 a Nevada company.” Opp’n to Mot. to Dismiss 7:21. Here, it is foreseeable that Exobox would



1 be harmed by the online posts and the Texas lawsuit, and it is, thus, also foreseeable that harm  
2 would occur in Nevada, where Exobox was incorporated.

3 **b. Relation to Specific Forum Activities**

4 There is no dispute that Exobox's claim arises out of or relate to Tsambis's online  
5 postings and his Texas lawsuit.

6 **c. Reasonableness/Fair Play and Substantial Justice**

7 In evaluating whether the assertion of personal jurisdiction would comport with fair play  
8 and substantial justice, "courts in 'appropriate case[s]' may evaluate 'the burden on the  
9 defendant,' 'the forum State's interest in adjudicating the dispute,' 'the plaintiff's interest in  
10 obtaining convenient and effective relief,' 'the interstate judicial system's interest in obtaining  
11 the most efficient resolution of controversies,' and the 'shared interest of the several States in  
12 furthering fundamental substantive social policies.'" Burger King Corp. v. Rudzewicz, 471 U.S.  
13 462, 476–77 (1985) (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292  
14 (1980)). The burden is on Tsambis to make a compelling case why jurisdiction would be  
15 unreasonable. Schwarzenegger, 374 F.3d at 802. It is rare for fair play and substantial justice to  
16 "defeat the reasonableness of jurisdiction even [though] the defendant has purposefully engaged  
17 in forum activities." Asahi Metal Indus. Co. v. Superior Court of California, Solano Cnty., 480  
18 U.S. 102, 116 (1987) (Brennan, J., concurring) (alteration in original) (quoting Burger King, 471  
19 U.S. at 477–78).

20 To support this argument, Tsambis first recites a litany of fifteen things he has not done  
21 in Nevada including reside, maintain a place of business, apply for licenses or establish his  
22 family. Mot. to Dismiss ¶ 20. Second, Tsambis indicates that litigating in Nevada would be a  
23 burden. Id. at ¶ 21. Next, Tsambis points out that there is already a pending lawsuit in Texas  
24 and that there will be two actions in two separate states which will waste judicial resources and  
25 might end in different results. Id. at ¶ 22. Finally, Tsambis suggests Nevada "has no real interest  
26 in adjudicating the dispute" because Exobox's "nerve center" has not been in Nevada. Id. These  
27 arguments are not compelling.

28 First, Tsambis's list of things he has not done in Nevada simply reiterates his arguments

1 about minimum contacts and speaks more to the issue of a lack of general jurisdiction.  
2 Tsambis's suggestion that Nevada has no real interest is similarly inapposite. "A State generally  
3 has a 'manifest interest' in providing its residents with a convenient forum for redressing injuries  
4 inflicted by out-of-state actors." Burger King, 471 U.S. at 473. It is not disputed that Exobox is  
5 incorporated in Nevada, and Tsambis's contention that Exobox's nerve center was in Texas—  
6 and that by extension Texas may *also* have an interest—does not negate Nevada's interest in its  
7 corporate citizen's welfare.

8 The mere fact that local litigation is inconvenient—or some other forum may be more  
9 convenient—is not enough; rather Tsambis "must show that jurisdiction in [Nevada] would  
10 make the litigation 'so gravely difficult and inconvenient that a party unfairly is at a severe  
11 disadvantage in comparison to his opponent.'" Sher v. Johnson, 911 F.2d 1357, 1365 (9th Cir.  
12 1990) (quoting Burger King, 471 U.S. at 478). As the Ninth Circuit observed twenty-four years  
13 ago, requiring a nonresident to defend in a distant state "in this era of fax machines and discount  
14 air travel" is not unreasonable. Id. Remote litigation is even more convenient in the era of  
15 electronic filing and telephonic hearings. Relatedly, while litigation in two different states is less  
16 efficient than litigation in one state, it is unclear how this affects fairness to Tsambis (beyond the  
17 inconvenience addressed above). Jurisdiction in Nevada is not unreasonable and is not an affront  
18 to fair play and substantial justice.

19 Therefore, Tsambis has the minimum contacts necessary, pursuant to Schwarzenegger,  
20 for the exercise of specific personal jurisdiction in Nevada.

## 21 **VI. Conclusion**

22 Because, as discussed above, Exobox has made out a *prima facie* case for specific  
23 personal jurisdiction, Tsambis's Motion to Dismiss must be denied. However, Tsambis may  
24 raise the issue of personal jurisdiction later should evidence be available that supports such a  
25 motion at that time. Accordingly,

26 IT IS ORDERED that Defendant's Motion to Dismiss for Lack of Personal Jurisdiction,  
27 ECF No. 8, is DENIED without prejudice to renewing the issue.

28 IT IS FURTHER ORDERED that Defendant's Motion Requesting Evidentiary Hearing,

1 ECF. No. 7, is DENIED with prejudice.

2 IT IS FURTHER OREDERED that Plaintiff's Motion to Strike, ECF No. 15 at 2:16–24,  
3 is DENIED with prejudice.

4 Dated: January 6, 2015.



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5 RICHARD F. BOULWARE  
6 UNITED STATES DISTRICT JUDGE  
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